

E-FILED on 11/23/2011

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE GOOGLE LITIGATION

No. C-08-03172 RMW

ORDER DENYING DEFENDANT GOOGLE
INC.'S MOTION FOR RELIEF FROM
NONDISPOSITIVE PRETRIAL ORDER OF
MAGISTRATE JUDGE

[Re Docket No. 573]

Defendant Google Inc. ("Google") objects to the magistrate judge's order granting plaintiff's motion for protective order dated October 31, 2011 (Dkt. No. 559). Specifically, Google objects to the portion of the magistrate judge's order prohibiting it from seeking new standing-related discovery. For the reasons set forth below, the court denies Google's motion for relief.

Google argues that the magistrate judge erred on two grounds: first, in finding that this court's December 15, 2010 order denying Google's motion to dismiss resolved all standing disputes, and second, in applying the wrong standard for jurisdictional discovery.

This court previously found that an agreement between plaintiff's parent companies did not divest plaintiff Software Rights Archive LLC ("SRA") of any of the rights attached to its patents and further stated:

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the mere fact that Software Rights Archive, LLC is the subsidiary of companies which exercise some or even significant control over it as a result of the corporate structure does not mean that Software Rights Archive LLC has transferred substantial patent rights to its parent companies. Software Rights Archive LLC holds all important rights in the asserted patents, and thus has standing in this case.

Dkt. No. 296 ("December 15, 2010 Order") at 3-4. Google argues that the court's holding assumes parent company Altitude Capital Partners ("Altitude") properly observes the corporate form and abides by the contractual language. Google argues that its new discovery requests are directed to whether that premise is true or whether Altitude exercises direct control of SRA's assets, including the patents-in-suit. The court has already found that parent-subsiary control does not translate into an assignment of substantial rights to the parent company, but Google appears to suggest that, if Altitude has improperly wrested control of the patents from SRA, then the court must accept that reality and decline to recognize SRA's rights. However, without citing legal support for this theory, Google has not presented grounds for new discovery that would disturb this court's finding that SRA has standing.

Google next argues that the correct standard for allowing jurisdictional discovery is whether "the jurisdictional facts are contested or more facts are needed," quoting *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003). The magistrate judge's decision is consistent with this standard, as it found that the December 15, 2010 Order clearly resolved whether SRA holds all important rights in the asserted patents – in other words, no more facts are needed. *Laub* confirms that "[a] district court is vested with broad discretion to permit or deny discovery." 342 F.3d at 1093. Notably, this is not the usual case in which a court, having denied jurisdictional discovery, dismisses the case for lack of jurisdiction. Rather, the court has found, after Google obtained discovery and moved to dismiss, that jurisdiction exists and the case can go forward.

ORDER

For the foregoing reasons, the court denies Google's motion for relief.

DATED: 11/23/2011


RONALD M. WHYTE
United States District Judge